

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 JAMES MCDANIEL,
4 Plaintiff

5 v.

6 JAMES DZURENDA, et. al.,
7 Defendants
8

Case No.: 3:19-cv-00101-RCJ-WGC

Order

Re: ECF Nos. 1-2, 4-2, 8, 9

9
10 Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC).
11 He has filed a first amended civil rights complaint under 42 U.S.C. § 1983 (ECF No. 4-1) and an
12 application to proceed in forma pauperis (IFP) (ECF No. 4). He has also submitted two motions
13 for appointment of counsel (ECF Nos. 1-2, 4-2), and a motion for appointment of a guardian ad
14 litem (ECF No. 8.) Most recently, he filed a letter stating that Defendants are stealing his legal
15 mail and asks the court to check the unit and notify him of the status. (ECF No. 9.)

16 His first amended complaint sues multiple defendants for events that took place while he
17 was incarcerated at Northern Nevada Correctional Center (NNCC). His allegations include
18 claims under the Eighth Amendment for failure to protect him when he was placed in a unit
19 without looking at his enemy list, and he was then attacked and sexually assaulted by an inmate
20 known to sexually assault other inmates. He also attempts to state claims for violation of his
21 rights to equal protection, due process, and under the Americans with Disabilities Act (ADA)
22 related to his allegations that he is blind and was unable to effectively exhaust his
23 administrative remedies because he could not get help filing grievances, and cannot adequately

1 use the law library. Finally, Plaintiff tries to assert a retaliation claim related to denial of access
2 to the grievance system.

3 In his two motions for appointment of counsel and his motion for appointment of
4 guardian ad litem (ECF Nos. 1-2, 4-2, 8), (the latter two were drafted by another inmate),
5 Plaintiff asserts again that he is blind and this affects his ability to write and conduct legal
6 research. He states that he has no physical access to the law library, and the law library worker
7 must service the entire unit of 84 inmates. He claims that his blindness prevents him from
8 helping himself with his action, and while in a segregated unit he cannot get the help he needs.

9 A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983
10 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28
11 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to
12 afford counsel.” However, the court will appoint counsel for indigent civil litigants only in
13 “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983
14 action). “When determining whether ‘exceptional circumstances’ exist, a court must consider
15 ‘the likelihood of success on the merits as well as the ability of the petitioner to articulate his
16 claims *pro se* in light of the complexity of the legal issues involved.” *Id.* “Neither of these
17 considerations is dispositive and instead must be viewed together.” *Id.*

18 Under Rule 17(c), “[t]he court must appoint a guardian ad litem—or issue another
19 appropriate order—to protect a minor or incompetent person who is unrepresented in an action.”
20 Fed. R. Civ. P. 17(c)(2).

21 Plaintiff’s filings do not indicate that Plaintiff is incompetent, but instead that he is blind
22 and needs assistance with access to the law library, writing, and otherwise prosecuting this
23 action. Therefore, Plaintiff’s motion for guardian ad litem will be construed as a motion seeking

1 the appointment of counsel. In addition, the first motion for appointment of counsel (ECF No. 1-
2 2) appears to have been written by Plaintiff himself, and understandably, is difficult to read.
3 Therefore that motion (ECF No. 1-2) will be dismissed, and the court will consider the issues
4 presented in ECF Nos. 4-2 and 8.

5 The court will order the Attorney General's Office to enter a limited notice of appearance
6 for a telephonic status conference addressing Plaintiff's blindness and ability to prosecute this
7 action, and will require the Attorney General's Office to file *under seal* any *relevant* medical
8 records or other records regarding the current status of his vision and ability to prosecute this
9 action.

10 Finally, the court will deny Plaintiff's most recent filing regarding the stealing of legal
11 mail (ECF No. 9) without prejudice as that issue is not presently proceeding in this action and
12 Plaintiff's statement is too vague for the court to act on. The denial is without prejudice as the
13 court recognizes that Plaintiff claims he is blind and he appears to have written that motion
14 himself.

15 **CONCLUSION**

16 (1) The motion/letter requesting the court check the unit and advise him regarding the alleged
17 stealing of his legal mail (ECF No. 9) is **DENIED WITHOUT PREJUDICE**;

18 (2) The first motion for appointment of counsel (ECF No. 1-2) is **DENIED**;

19 (3) The motion for appointment of guardian ad litem (ECF No. 8) will be construed as requesting
20 the appointment of counsel and the court will consider the issues presented in both ECF Nos. 4-2
21 and 8;

22 (4) The Clerk of Court shall electronically **SERVE** a copy of this Order on the Office of the
23 Attorney General of the State of Nevada, by adding the Attorney General of the State of Nevada

1 to the docket sheet. This does not indicate acceptance of service. Within **21 days** of the date of
2 this Order, the Attorney General's Office shall enter a limited notice of appearance for a
3 telephonic hearing addressing the status of Plaintiff's blindness and his ability to prosecute this
4 action. No defenses or objections, including lack of service, shall be waived as a result of the
5 filing of the limited notice of appearance. Also within **21 days**, the Attorney General's Office
6 shall file with the court *under seal* any *relevant* medical records or other *relevant* records
7 regarding the current status of Plaintiff's vision and ability to prosecute this action. The Attorney
8 General's Office shall ensure that Plaintiff is given adequate time to review these records, along
9 with his inmate assistant, sufficiently in advance of the hearing. The court will issue a separate
10 order setting this matter for a telephonic hearing. In the order setting the matter for a hearing,
11 Plaintiff's inmate assistant (Felton L. Matthews assisted in preparing the first amended
12 complaint) will be directed to appear for the telephonic hearing along with Plaintiff. In addition,
13 the Attorney General's Office shall ensure that Plaintiff, and his inmate assistant, have access to
14 the relevant records during the hearing.

15 **IT IS SO ORDERED.**

16 Dated: March 5, 2020

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18 William G. Cobb
19 United States Magistrate Judge
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